In considering the guilt of the accused, I have taken into consideration the testimony given by the accused himself. While he contended that the article contained criticism which he regarded as fair comment, he did not seem to challenge that he published it. Dr. Ooi who testified for the defence, explained at length not only the object of his criticism but also the meaning he had in mind when he uttered those words. In view of what I stated earlier, I am not satisfied that there is any merit whatever in the defence. In my judgment, the accused is guilty and I do convict him of the offence charged.

In considering the appropriate sentence to be passed, I have taken into consideration the plea of mitigation made by Encik Yeap.

The offence carries a maximum sentence of fine not exceeding $5,000 and imprisonment for a term not exceeding three years or both fine and imprisonment. In my judgment, a fine would suffice having regard to the circumstances of this case. I therefore impose a fine of $2,000 in default 6 months imprisonment.

Order accordingly.

Solicitors: *Yeap & Co.*

DIRECTOR-GENERAL OF INLAND REVENUE v. C.

[A.C.J. (Gill C.J. (Malaya)) January 18, 1975]
[Kuala Lumpur — Originating Motion No. 61 of 1972]

Income Tax — Termination of service — Payment of compensation — Whether compensation for loss of employment or gratuity in respect of having or exercising employment — Income Tax Act, 1967, s. 13(1)(a) & (e) and Sch. 6, para. 15(1)(b).

The respondent had been employed as a Regional Officer by the Malayan Planting Industries Employers' Association initially for a period of three years and then subsequently for two further terms of duty of two years each. The respondent was informed that owing to the impending dissolution of the association and its replacement by a new body his services might be terminated, and if continuation of employment in the new organisation was not offered to him, the association would pay him the sum of $30,000/- as compensation for loss of office. The respondent was not offered employment and he became eligible to receive the sum of $30,000/-. The sum of $10,222.61 was retained as income tax payable by the respondent. On appeal to the Special Commissioners, it was held that the sum of $30,000/- was paid to the appellant as compensation for loss of employment within the meaning of section 13(1)(e) of the Income Tax Act and was assessable for tax subject to exemption under paragraph 15(1)(b) of Schedule 6 to the Act. It was therefore ordered that the assessment be amended accordingly. The Director-General of Inland Revenue appealed by way of case stated.

Held, dismissing the appeal: the Special Commissioners were right in decidng that the sum of $30,000 awarded to the respondent was compensation for loss of employment and therefore liable to income tax under section 13(1)(e) but subject to the exemption under paragraph 15(1)(b) of Schedule 6 to the Income Tax Act, 1967.

Cases referred to:-

(1) *Chibbett* v. *Joseph Robinson & Sons* (1924) 9 T.C. 48.

(2) *Comptroller-General of Inland Revenue* v. *I.* [1972] 2 M.L.J. 73.

(3) *H.* v. *Comptroller-General of Inland Revenue* [1974] 2 M.L.J. 134.

CASE STATED.

Mohamed Nizar bin Idris (Senior Federal Counsel) for the appellant.

Respondent unrepresented and absent.

Gill C.J.: This is an appeal by way of case stated by the Special Commissioners of Income Tax on the requisition of the appellant under para. 34 of Schedule 5 to the Income Tax Act, 1967.

The question to be determined in the appeal is whether the sum of $30,000 received by the respondent in September 1968 upon the termination of his employment with the Malayan Planting Industries Employers' Association (hereinafter referred to as MPIEA) is liable to income tax under the Income Tax Act, 1967.

The respondent was appointed as a Regional Officer by the MPIEA as from 31st October 1960. His appointment in the first instance was for a period of three years with an overseas leave entitlement of six months at the end thereof. His employment was loosely described as a contract, and at some later stage, as a tour. On the expiry of his leave following on the completion of his first tour of duty, the appellant was re-engaged for a two-year tour followed by an overseas leave of four months. On the completion of his second tour and leave, the respondent commenced his third tour on 1st September 1966.

By a letter dated 15th October 1966 the executive president of MPIEA informed the respondent that immediate steps were being taken for the dissolution of MPIEA and the setting up of a new body to be known as Malayan Agriculture Producers' Association (hereinafter referred to as MAPA) to perform the functions previously undertaken by MPIEA. It was also proposed to set up an advisory service for MAPA with similar functions as hereto performed by the original staff of MPIEA. The letter went on to say that if continuation of employment in the proposed MAPA advisory service was not offered to the respondent or if such offer was not accepted by him, MPIEA would, among other things, pay him a sum of $30,000 as compensation for loss of office consequent upon the dissolution of MPIEA. MPIEA was dissolved in December 1966, and a trust fund was created to meet its liabilities and other commitments including that of paying compensation to the respondent and other officers affected by the dissolution of MPIEA.

By a letter dated 29th December 1966, the respondent was informed of the setting up of MAPA advisory service and was given a formal notice of termination of employment by MPIEA to end "as at 31st March 1967." The letter went on to state that the notice would in no way affect the decision notified to him by the letter of 15th October 1966 as regards payment of compensation for loss of employment. By the same letter the respondent was offered temporary employment by MAPA until 31st March 1967 "payment for which will be on M.P.I.E.A. account."

On 17th January 1967 Mr. Perera as director of MAPA wrote to the respondent offering him a temporary appointment as an Industrial Relations Officer in the MAPA Regional Service from 1st April 1967 to 31st August 1968. This would complete the respondent's current tour of two years which he had

commenced with MPIEA on 1st September 1966. It was stressed in the letter that in deciding to offer only a temporary appointment MAPA had taken into consideration the need for progressive Malayanisation of the staff of MAPA. On the same day Mr. Perera as executive vice-president of MPIEA wrote another letter to the respondent to say that if the respondent accepted the offer contained in MAPA's letter of the same date, MPIEA would, among other things, pay a sum of $30,000 as compensation for premature termination of employment after the respondent ceased his temporary employment with MAPA on 30th August 1968.

The respondent completed his temporary employment and stopped working with MAPA with effect from 31st August 1968, as he was not offered continuation of employment with MAPA as was envisaged in the letter of the executive vice-president dated 15th October 1966. In September 1968 the respondent became eligible to receive the sum of $30,000 which was paid to him less the sum of $10,221.61 retained by the Department of Inland Revenue pending the decision of an appeal by the respondent to the Special Commissioners against the retention of that sum as income tax on the said sum of $30,000.

At the hearing of the appeal by the Special Commissioners, a preliminary objection was taken to Mr. Schubert sitting as one of the Special Commissioners on the grounds that he had been a member of the staff of MPIEA and MAPA, that he was aware of the facts of the case and that he had in fact discussed the case with the respondent on a previous occasion. The Special Commissioners, however, overruled the objection on the ground that Mr. Schubert had no pecuniary or other interest whatsoever in the matter and had in no way been concerned with policy matters.

On the evidence before them the Special Commissioners found that the respondent's service with MPIEA, although described as a contract or tour, was of a permanent nature until the age of 55 years, terminable, however, by 3 months' notice on either side. They also found that the respondent's salary was on an incremental scale applicable to regional officers of MPIEA, so that the permanency of employment up to the age of 55 years was a tacit agreement between the parties.

It was contended for the revenue that the respondent's employment was not permanent, that the sum of $30,000 paid to him was not compensation for loss of employment because it was not paid for any breach of any agreement between him and MPIEA, that it was a voluntary payment and that he had no right to any compensation as his services had been terminated in accordance with his contract with MPIEA. On all those grounds it was contended that the sum of $30,000 paid to the respondent was a remuneration or gratuity within the meaning of section 13(1)(a) of the Income Tax Act, 1967 and therefore assessable for income tax under section 4(b) of the Act.

The Special Commissioners rejected that contention and held that, as the respondent's employment was likely to continue until he reached the age of 55 years, the sum of $30,000 paid to him was compensation for loss of employment within the meaning of section 13(1)(e) and assessable for tax under section 4(b) of the Act, but subject to exemption under para. 15(1)(b) of Schedule 6 to the Act. They therefore ordered that the assessment be amended accordingly.

The appeal by the appellant to this court was argued on the same grounds as were advanced before the Special Commissioners. Counsel for the appellant said that there were two points of law involved in the appeal. The first point was on the question whether there had been a breach of the principle of natural justice by reason of Mr. Schubert having sat as one of the commissioners to hear the appeal. In my judgment there is no merit in that point. As was stated by the Special Commissioners, Mr. Schubert had no pecuniary interest in the matter and he had in no way been involved in matters of policy as regards payment of compensation to employees of MPIEA or MAPA whose services were terminated prematurely.

The second point taken was that the commissioners were wrong in holding that the respondent was a permanent employee until the age of 55 years. I do not think that that is what the Special Commissioners held. What they held was that the respondent's employment was likely to continue until he reached the age of 55 years. In *Chibbett* v. *Joseph Robinson & Sons*[1] Rowlatt J. said: —

"Compensation for loss of employment which need not continue, but which was likely to continue, is not annual profit within the scope of the income tax at all."

That statement of the law by Rowlatt J. was approved by the Privy Council in *Comptroller-General of Inland Revenue* v. *T.*[2].

In the recent case of *H.* v. *Comptroller-General of Inland Revenue*[3] their Lordships of the Privy Council said that they saw no reason to dissent from or question the proposition that for a payment to be compensation for loss of employment, there must be a real prospect of future employment. On the facts of that case their Lordships held that there was a real prospect of employment until the appellant reached the age of 55, though that service might be terminated in accordance with the contract of service before the appellant reached that age. It would seem clear that the facts of the present case are very similar to the facts of that case.

The case of *H.* v. *Comptroller-General of Inland Revenue*[3] was pending before the Privy Council when I heard this appeal quite some time ago. I had heard that case when it came before me as a case stated. I was not quite sure that what I had decided in that case, even though I was upheld by the Federal Court, was right. I therefore decided to reserve judgment in this case until the decision of the Privy Council in that case. As I have already said, the facts of this case are very similar to the facts of that case. I must therefore hold that the Special Commissioners were right in deciding that the sum of $30,000 awarded to the respondent was compensation for loss of employment and therefore liable to income tax under section 13(1)(e) but subject to the exemption under para. 15(1)(b) of Schedule 6 to the Income Tax Act, 1967.

I would dismiss this appeal with costs.

Appeal dismissed.